WA 12/2007
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE(ACTG.)
THE HON'BLE MR JUSTICE HRISHIKESH ROY
JUDGMENT AND ORDER(ORAL)

H.Roy,J.

Heard Ms P. Chakraborty, learned counsel for the appellant and also Mr SN Sarma, learned senior counsel for the respondents.

2. The appellant is before this court challenging the order dated 21.11.2006 passed by the learned Single Judge on the writ petition filed by the respondent-Management. The order passed by the Assistant Labour Commissioner, Silchar directing the Management to make payment of shift allowance to the employees working under them was under challenge in the writ petition. The said order came to be challenged by the Management on the ground that while exercising powers u/s 33C of the Industrial Disputes Act, (hereinafter referred to as the Act), the Assistant Labour Commissioner had no jurisdiction to determine the entitlement of the workmen to the payment of shift allowance.

3. It was contended on behalf of the Management that the workmen, in the event of work beyond their normal duty hours, are entitled to over time allowance in terms of Section 59 of the Factories Act and the claim for shift allowance could not have been ordered by the Assistant Labour Commissioner in exercise of jurisdiction under the powers conferred by Section 33C of the Act.

4. Ms Chakraborty, learned counsel for the appellant has, however, argued that the Labour Court was within its jurisdiction to pass the order for payment of shift allowance and, in support of the said contention, the leaned counsel has drawn attention of this court to the judgment reported in 1963 (II) LLJ 89 (Central Bank of India Ltd and others vs. Rajagopalan(P.S.) and others). In the said judgment, the Supreme Court, while interpreting the powers of the Assistant Labour Commissioner u/s 33C of the Act, held that when an existing right is already available for payment to workmen, the Labour Court in exercise of powers u/s 33C can order for payment of such amount on the basis of such existing right.

5. Mr SN Sarma, learned senior counsel, has drawn attention of the court to the decision rendered by the Supreme Court reported in (1998) 8 SCC 671 (Tara and others vs. Director, Social Welfare and others). In this decision, the Supreme Court has approved the conclusion of the Labour Court that unless there is a prior adjudication on merit on the entitlement, an application u/s 33C of the Act is not maintainable.

6. We have examined the reasoning given by the learned Single Judge in the impugned judgment and order. The learned Single Judge has held that in the event of extra work done by the workmen the payment for the same would be regulated by over-time allowance under the provisions of Section 59 of the Factories Act. This view has been taken by the learned Single Judge on the basis of his finding that there is no specific provision in the Memorandum of Settlement for payment of a second shift allowance for works rendered beyond normal shift i.e. over time work. In such circumstances, the learned Single Judge has held that the workmen were not remedyless and the proper course for them should have been to initiate process u/s 10 of the Act or alternately to incorporate specific provision to take care of such entitlement, in the Memorandum of Settlement itself. On the basis of such finding recorded by the learned Single Judge, it has been held that the impugned order dated 18.12.2003 passed by the Assistant Labour Commissioner is an order, beyond the powers conferred u/s 33C of the Act.

7. We have considered the arguments advanced by the learned counsels. We have also examined the provisions of the Act and also the impugned judgment rendered by the learned Single Judge. It is seen that the learned Labour Court in the instant case has decided on the entitlement of the workmen to payment of shift allowance, while exercising powers under Section 33C of the Act. Exercise of such power is held by the Supreme Court to be beyond the competence of the Labour Court when it exercises powers under Section 33C of the Act. This was accordingly held by the learned Single Judge to be an act, beyond the powers conferred by Section 33C and the impugned order of the Labour Court was thus set aside.

8. Having considered the matter in its entirety, we are of the opinion that the view taken by the learned Single Judge is correctly taken and accordingly the impugned order does not suffer from any infirmity requiring interference by us. Accordingly, the Writ Appeal is dismissed.

9. No costs.